Supreme Court, U.S.
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No. 03-

IN THE

Supreme Court of the United States

SABRIYANA M. SINGH

Petitioner,

v.

PRUDENTIAL HEALTH CARE PLAN, INC.,
t/a Prudential Health Care Plan of the Mid-Atlantic,
t/a Prudential Insurance Company of America

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Whether the Employee Retirement Income Security Act ("ERISA") completely preempts all causes of action for ERISA plan members that are based upon state regulations of the business of insurance within the meaning of ERISA's Savings Clause, 29 U.S.C. § 114(b)(2)(A), as the Fourth Circuit below and the Fifth Circuit have held, or whether claims based exclusively upon such state laws are purely matters of state jurisdiction that do not give rise to removal jurisdiction, as the Second and Third Circuits have held?

(2) Whether ERISA's Enforcement Clause incorporates all actions based upon state laws, without regard to whether they seek to enforce the actual terms of the ERISA plan as written, as the Fourth Circuit below and the Fifth Circuit have held, or whether such claims are not properly claims under ERISA's Enforcement Clause, as the Third and Sixth Circuits have held?

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PARTIES TO THE PROCEEDING

The parties to the proceeding below were petitioner Sabriyana M. Singh, the named plaintiff in a putative class action (as appellant), and Prudential Health Care Plan, Inc. (as appellee).

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Fourth Circuit (App. 1-28) is reported at 335 F.3d 278 (4th Cir. 2003). The unreported order of the U.S. District Court for the District of Maryland, which issued no written opinion was entered on December 14, 2001. (App. 29.)

JURISDICTION

The judgment of the Court of Appeals was entered on July 3, 2003. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of ERISA include its preemption clause, 29 U.S.C. § 1144(a):

> Except as provided in subsection (b) of this section, the provisions of this subchapter . . . shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . .

ERISA's Savings Clause, 29 U.S.C. § 1144(b)(2)(A), is also at issue here:

> Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking or securities.

Finally, this appeal involves ERISA's Enforcement Clause, 29 U.S.C. § 1132(a):

> A civil action may be brought – (1) by a participant or beneficiary – . . .

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

STATEMENT OF THE CASE

This is a putative class action lawsuit seeking damages from Prudential Health Care Plan ("Prudential"), an HMO, for pursuing subrogation claims against its members, a practice which violated the Maryland HMO Act. *See Riemer v. Columbia Medical Plan*, 358 Md. 222, 747 A.2d 677 (2000). Several similar class actions against other HMOs are pending in Maryland state courts now. Prudential removed this case to federal court, however, claiming federal preemption under ERISA.

However, the Fourth Circuit rejected Prudential's federal preemption defense, correctly holding, applying this Court's clear guidance in *FMC Corp. v. Holliday*, 498 U.S. 52 (1990), plaintiff's claims fall within ERISA's Savings Clause. Nonetheless, the Fourth Circuit held that this case belongs solely in federal court because ERISA completely preempts (and therefore creates exclusive federal jurisdiction and removal jurisdiction over) any civil lawsuit brought by an individual pursuant to any state law regulating the business of insurance.[1]

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[1] About a week after the Fourth Circuit issued the decision below, the Fifth Circuit (sitting en banc) issued a decision in a very similar ERISA preemption case (also involving claims under an anti-subrogation statute) to the same effect. *Arana v. Ochsner Health Plan*, 2003 WL 21554491 (5th Cir. 2003). The en banc decision in Arana reversed a panel of that Court, which had held that such claims should be remanded to state court. *See Arana v. Ochsner Health Plan, Inc.*, 302 F.3d 462 (5th Cir. 2002)

The Court of Appeals' decision was a significant extension of this Court's decision in *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987), where this Court held that ERISA's Enforcement Clause provides the exclusive remedy for (and thus completely preempts) claims brought to enforce the terms of an ERISA plan or to claim benefits under the terms of an ERISA plan. Plaintiff did not sue under ERISA and does not purport to claim benefits under the actual terms of an ERISA plan. She sued under Maryland state law, which prohibited the unambiguous term that was in Prudential's plan. By equating all claims under state laws that regulate the terms of insurance plans with claims based on the actual terms of ERISA plans, the Fourth Circuit extended *Pilot Life* to completely preempt all state law.

The Fourth Circuit's decision below that all state law claims within ERISA's Savings Clause are completely preempted by and incorporated into ERISA conflicts with the holdings and reasoning of two other U.S. Courts of Appeal. *See Franklin H. Williams Ins. Trust v. Travelers Ins. Co.*, 50 F.3d 144 (2d Cir. 1995); and *Pas v. Travelers Ins. Co.*, 7 F.3d 349 (3rd Cir. 1993). In sharp contrast to the decision of the Fourth Circuit, these courts have held that where plaintiffs make claims under state laws falling within ERISA's Savings Clause, and where those claims are based upon state law rather than the actual terms of the plans, that those claims should be remanded to state court.

The Fourth Circuit's decision also conflicts with decisions of two U.S. Courts of Appeal which have held that claims based upon state laws (as opposed to claims based upon the actual terms of the ERISA plan itself) do not fall within ERISA's Enforcement Clause. *See Dukes v. U.S. Healthcare, Inc.*, 57 F3.d 350 (3d Cir. 1995) and *International Resources, Inc. v. New York Life Ins. Co.*, 950 F.2d 294 (6th Cir. 1992).

The Fourth Circuit's decision that ERISA's Enforcement Clause and ERISA's Savings Clause work in combination to federalize all state law causes of action within the scope of the Savings Clause illustrates the confusion among the lower courts as to the operation and interaction of these two statutory provisions. This Court has adverted tc the issues raised by the relationship of these provisions, *see UNUM Life Ins. Co. of America v. Ward*, 526 U.S. 358 (1999), without resolving this issue. Accordingly, there is now turmoil in the law as to whether ERISA completely preempts all state law claims based upon state regulations of the business of insurance. Put another way, there is great uncertainty among the lower courts as to whether ERISA provides for complete preemption even where there is no conflict preemption.

Plaintiff filed this putative class action against appellee Prudential Health Care Plan, Inc. ("Prudential") in Maryland state court, raising state common law claims arising from alleged violations of certain provisions of the Maryland Health Maintenance Organization Act ("Maryland HMO Act"), Md. Health Gen. Ann. §§ 19-701(f) and 19-710(o). A.2. Ms. Singh was in a car accident, and received $5,000 from the other driver's insurer, Allstate Insurance Company. A.3. Prudential (which was Ms. Singh's insurer) asserted a lien against this recovery, and Ms. Singh paid Prudential's $950.12 to resolve this lien. A.3. The Maryland Court of Appeals has held that such subrogation recoveries by HMOs are illegal under the Maryland HMO Act. *See Riemer v. Columbia Medical Plan*, 358 Md. 222, 747 A.2d 677 (2000). Ms. Singh brought this action to recover this payment under the Maryland common law causes of action for Money Had and Received and negligent misrepresentation. A.3.

Prudential removed the case to federal court, and there urged the district court to dismiss the case, alleging in relevant part that the Maryland HMO Act provisions at issue, and

plaintiffs' claims generally, were preempted by ERISA.[2] Plaintiff moved to remand, and argued that ERISA did not preempt her claims. After a hearing on December 14, 2001, the District Court denied plaintiff's motion to remand, and granted defendant's motion to dismiss. A.22-23.

Plaintiff appealed to the U.S. Court of Appeals for the Fourth Circuit. The Fourth Circuit began by holding that the plaintiff's claims based on the Maryland HMO Act were within ERISA's Savings Clause, App.15, following this Court's holding on that point in *FMC Corp. v. Holliday*, 498 U.S. 52, 60-61 (1990). The Fourth Circuit easily dismissed Prudential's claim "that the subrogation prohibition is not saved because HMOs should not be considered insurers in Maryland," App.11-12, following this Court's holding in *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 366-367 (2002). The Fourth Circuit further noted that the plaintiff sought no remedies beyond those available under ERISA's Enforcement Clause, App.18-19, and that ERISA contains no provision dealing with the substantive question of subrogation that would conflict with the Maryland HMO Act. App.20.

Nonetheless, the Fourth Circuit held that plaintiff's claims based upon the Maryland HMO Act were completely preempted

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[2] Prudential also argued that plaintiff's claims were barred by a retroactive statute enacted by the Maryland legislature shortly after the *Riemer* case had been decided that permitted HMOs to pursue subrogation within certain limits and under certain circumstances. That issue was rendered moot when the Maryland Court of Appeals held that the retroactive provisions of the state legislation permitting HMOs to pursue subrogation violated the Maryland Constitution. *Dua v. Comcast/Harvey v. Kaiser Foundation Health Plan*, 805 A.2d 1061 (Md. 2002),

by ERISA. The Court held that "[a] State law preserved as a regulation of insurance under § 514(b)(2)(A) may supply a substantive term or mandate a benefit in an employee benefit plan, but once that term or benefit becomes part of the plan, a suit to enforce it may only be brought under § 502(a)." App. 21. Accordingly, the Fourth Circuit concluded, plaintiff's cause of action amounted to a claim for entitlement to the "lawful" terms of the plan. App.21-26. As a result, these claims were "conver[ted] into federal claims . . . [that] must now be decided by the district court." App.22. The Court of Appeals' decision contained no limitation that would prevent its rationale from converting any claim by an ERISA plan member based upon any state law that falls within ERISA's Savings Clause into a federal claim.

Accordingly, the Fourth Circuit reversed the district court's order dismissing the case, but affirmed the district court's order denying plaintiff's motion to remand.

REASONS FOR GRANTING THE WRIT

The petition for certiorari should be granted because the lower courts are in a state of confusion as to the proper relationship of ERISA's Enforcement Clause and ERISA's Savings Clause. While the Fourth Circuit below and the Fifth Circuit in *Arana* concluded that any action to enforce a state regulation of insurance is necessarily also a claim for benefits under the plan and thus is completely preempted, a number of courts (including the Second and Third Circuits) have held that such actions constitute state law action and should properly be decided by state courts.

The lower federal courts are also in conflict over the question of what cases fall within ERISA's Enforcement Clause. A number of federal courts of appeal (and particularly the U.S. Courts of Appeals for the Third and Sixth Circuits)

have held that claims brought under a variety of state laws do not fall within ERISA's Enforcement Clause. These holdings necessarily contradict the Fourth Circuit's notion that all state laws should be treated as "terms" of ERISA plans under the Enforcement Clause.

The Fourth Circuit's opinion below is not only in conflict with the decisions of numerous other courts, but it also represents an enormous and unjustified expansion of federal jurisdiction over claims that are entirely based upon state law. The Court has directed that federal law only completely preempts and displaces state law when one of two conditions is present: a statute expressly completely preempts state law, or Congress intended to preempt an entire field. None of those rationales supports the sweeping increase in federal jurisdiction imposed by the Court below.

In addition, the Fourth Circuit's interpretation violates this Court's guidance by turning the whole idea of the Savings Clause on its head. Instead of "saving" the state law – preserving it from preemption – the Fourth Circuit transforms the entire category of state laws that regulate insurance into federal law. Under the Fourth Circuit's opinion, these state laws no longer exist in their own right, but are instead nationalized and federalized so that their only existence is as a component of federal law. This interpretation violates basic principles of federalism and will create a number of anomalies and difficulties.

This Court should grant the petition to resolve the conflict among the lower courts, and to confirm that saved state laws are actually saved and not federalized. In this case, that means that ERISA does not preempt the plaintiff's causes of action at all, much less "completely preempt" them, and therefore the matter should be remanded to the state court.

ARGUMENT

I. THIS COURT SHOULD GRANT *CERTIORARI* TO RESOLVE THE QUESTION OF WHETHER CAUSES OF ACTION HELD TO BE WITHIN ERISA'S SAVINGS CLAUSE SHOULD BE REMANDED TO STATE COURT.

A. In Contradiction to the Holding of the Court Below, Numerous Courts (Including Two U.S. Courts of Appeals) Have Held That Causes of Action Within ERISA's Savings Clause Must Be Remanded to State Court.

A number of courts have held that if a plaintiff brings a claim under a state law that is saved from preemption by the Savings Clause, a federal court may not proceed to resolve the case on the merits unless the plaintiff is making claims for benefits under the terms of the plan (as opposed to bringing a claim that arises solely from the state law). These Courts have held that in this setting, there is no conflict preemption, much less complete preemption. Accordingly, there is no federal jurisdiction, and the case must be remanded to state court. In *Franklin H. Williams Ins. Trust v. Travelers Ins.*, 50 F.3d 144, 149 (2nd Cir. 1995), a beneficiary of an ERISA plan brought a claim based upon a New York statute requiring that the interest on proceeds of a life insurance policy be computed from the date of death. *Franklin H. Williams*, 50 F.3d at 146. The district court held (as the Fourth Circuit held in this case) that the plaintiff's claims fell within ERISA's Savings Clause, but nonetheless were preempted under ERISA's Enforcement Clause. *Id.*, 50 F.3d at 146-47.

As in this case, the Second Circuit in *Franklin H. Williams* agreed with the district court that the New York statute fell within ERISA's Savings Clause. *Id.*, 50 F.3d at 151. The

Second Circuit drew a very different conclusion from this fact than did the Fourth Circuit below or the Fifth Circuit in *Arana,* however. The Second Circuit stated that "first there must be preemption, which is a necessary precondition to removal. Thus, when preemption is precluded by the saving clause, removal is also barred." 50 F.3d at 151. Accordingly, in *Franklin H. Williams*, the Second Circuit reached the precise opposite conclusion as the Fourth Circuit below and the Fifth Circuit in *Arana*: once the court found that a New York statute fell within ERISA's Savings Clause, it remanded the case to the district court with directions that the case should be remanded to the state court. "We conclude that [the state statute] is saved from preemption under ERISA. Accordingly, removal was improper." 50 F.3d at 151. The conflict between the Second Circuit in that case and the Fourth Circuit here and the Fifth Circuit in *Arana* could hardly be more plain.

The Third Circuit has also come to the opposite conclusion of the Fourth Circuit here. In *Pas v. Travelers Ins. Co.*, 7 F.3d 349, 356 (3rd Cir. 1993), a member of an ERISA plan brought claims based upon two New Jersey statutes against a disability insurer that refused coverage for a bipolar disorder. The district court held that the plaintiff's claims fell within ERISA's Savings Clause, and remanded her case to the state court. The insurer sought a writ of mandamus, arguing both (a) that the plaintiff's claims did not fall within ERISA's Savings Clause, and (b) that, even if the claims did fall within the Savings Clause, there was complete preemption under ERISA's Enforcement Clause. The Third Circuit agreed with the district court that the plaintiff's claims fell within ERISA's Savings Clause. *Pas*, 7 F.3d at 356. The court then turned to the insurer's argument under ERISA's Enforcement Clause. The Third Circuit explicitly noted that some courts of appeal had agreed with the insurer's position, and forcefully disagreed:

> We recognize that cases from other courts of appeals may be read to support Travelers' position on conflict preemption. *See, e.g.*, . . . *Ruble v. UNUM Life Ins. Co.*, 913 F.2d 295, 297 (6th Cir. 1990) (concluding that case was removeable to federal court because, "[r]egardless of how Michigan's insurance code might have modified the terms of the . . . insurance policy . . . any action brought by a beneficiary to enforce the policy as so modified could only be brought under § 502 of ERISA. . . ."). However, if we correctly read those cases as reaching a result contrary to the one we reach here, our preference is understandably for our own result. . . . Accordingly, we find no evidence that the district court abused its discretion in remanding the claim.

Id., 7 F.3d at 356-57 (footnote omitted).[3]

To further demonstrate the division of the lower courts as to the issue posed here, the Ninth Circuit appears to have come down on both sides at different points. In one case, that court found that ERISA's Enforcement Clause completely preempted a California statute that fell within ERISA's Savings Clause. *See Kanre v. Connecticut Gen. Life Ins. Co.*, 867 F.2d 489, 493-94 (9th Cir. 1988). In another case, the Ninth Circuit held that "complete preemption occurs under ERISA if (1) ERISA preempts the plaintiff's cause of action **and** (2) the cause of action falls within the scope of [ERISA's Enforcement

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[3] As Part II below demonstrates, the Sixth Circuit's position is not so clear on this issue as the *Ruble* case suggests. In two other cases, the Sixth Circuit has held that state law claims are not necessarily incorporated into ERISA's Enforcement Clause. *See International Resources, Inc. v. New York Life Ins. Co.*, 950 F.2d 294 (6th Cir. 1992) and *Warner v. Ford Motor Co.*, 46 F.3d 531 (6th Cir. 1995). The position rejected by the Third Circuit in *Pas*, however, *is* clearly the same as the Fourth Circuit's position below.

Clause]." *Emard v. Huges Aircraft Co.*, 153 F.3d 949, 953 (9th Cir. 1998) (emphasis added). This holding that a cause of action must both fall within § 1144's ambit, **and** fall within the Enforcement Clause to give rise to complete preemption is contrary to the disjunctive approach of the Fourth Circuit, which would find complete preemption whenever a case is excluded from § 1144 by the Savings Clause.[4]

One U.S. District Court has accurately described the state of law on the question presented by this Petition as constituting a "conflict between the Circuits." *Tovey v. Prudential Inc. Co. of America*, 42 F. Supp.2d 919, 923 (W.D. Mo. 1999). The *Tovey* court noted that "[s]everal courts of appeals have created a two-part test for complete preemption, first determining whether the state law claim is preempted by ERISA § 514, and then considering whether the claim falls within the scope of ERISA § 502." 42 F. Supp.2d at 923. Unless both parts of the test are met (unlike here), there is no complete preemption and the case belongs in state court.

The Second and Third Circuits' adoption of this two-part test is joined by a host of U.S. district court decisions. Many district court judges have remanded cases falling within ERISA's Savings Clause to state court, a disposition which inherently contradicts with the approach and holding of the Fourth Circuit in this case. *See, e.g., Haag v. Hartford Life and Accident Ins. Co.*, 188 F. Supp. 2d 1135, 1141 (D. Minn. 2002) ("We conclude that Minn. Stat. § 61A.011, Subd. 1 is a

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[4] The Tenth Circuit's position is less clear, but in a somewhat analogous case it has rejected a complete preemption argument as to claims that it found to be within ERISA's Savings Clause. *Cf. Dang v. UNUM Life Ins. Co. of America*, 175 F.3d 1186, 1192 (10th Cir. 1999) (rejecting insurer's argument that ERISA so completely preempts the area that federal common law should govern over Oklahoma's notice-prejudice rule, and finding that Oklahoma's law was "not preempted" under ERISA's Savings Clause).

Minnesota law which regulates insurance within the meaning of the ERISA clause which saves such laws from preemption, 29 U.S.C. § 1144(b)(2)(A). Since the Minnesota statute is not preempted by ERISA, there is no federal jurisdiction over Plaintiff's Complaint."); *Macro v. Indep. Health Ass'n,* Inc., 180 F. Supp.2d 427 (W.D.N.Y. 2001) (subscribers claims against HMO were within ERISA's Savings Clause, the case was remanded to state court); *Hill v. Blue Cross Blue Shield of Alabama*, 117 F. Supp. 2d 1209, 1213 (N.D. Ala. 2001) (after finding that case was within Savings Clause, "it follows that this court lacks subject matter jurisdiction in this case. There being no federal question . . . , the court will grant Mr. Hill's motion to remand by separate order."); *Blue Cross and Blue Shield of Alabama v. Fondren*, 966 F. Supp. 1093 (M.D. Ala. 1997) (Alabama's law of subrogation was saved from ERISA preemption as being within ERISA's Savings Clause, and therefore the case was dismissed without prejudice on the grounds that there was no federal jurisdiction); *Cellilli v. Cellilli*, 939 F. Supp. 72, 79 (D. Mass. 1996) (remanding claim brought under state statute providing for continued coverage for divorced spouses, once the court had determined that the statute was saved from ERISA preemption: "In addition, there being no subject matter jurisdiction, the court recommends that the matter be remanded to the state court for further proceedings."); *LaFuria v. Louisiana Health Serv. Indemnity Co.*, 826 F. Supp. 1017, 1018 (W.D. La. 1993) (the court remanded a doctor's suit against a group health insurance company back to state court because the state laws under which the claim was brought "are exempt from preemption of ERISA under the 'saving clause' of the act."); *Graves v. Blue Cross of Calif.*, 688 F. Supp. 1405 (N.D. Cal. 1988) ("In cases where the state law in question is insurance regulation within the meaning of the saving clause, . . . the state law is not preempted . . . and this court lacks subject matter jurisdiction over the case. The motion to remand is therefore granted."); *Levine, Benjamin, Tushman, Bratt, Jervis and Stein, P.C. v. Paul Revere Life Ins. Co.*, 875 F. Supp.

404 (E.D. Mich. 1995) (Michigan statute on liens in workers compensation cases was within ERISA's Savings Clause, so the case was remanded to state court); *Lessard v. Metropolitan Life Ins. Co.*, 618 F. Supp. 1268, 1273 (D. Me. 1985) (state law contract claim for payment of disability benefits was saved from preemption, and "[s]ince the claims of the original complaint were not preempted and there is no other basis for federal jurisdiction, this case was improvidently removed and must be remanded [to the Maine Superior Court]."); *Donlan v. Greater Regional Transit Authority*, 2000 WL 485268 (N.D. Ohio Mar. 21, 2000) (insured's claim that plan may not pursue subrogation was within ERISA's Savings Clause, and was remanded to state court); and *Trapanotto v. Aetna Life Ins. Co. - Aetna Health Plans*, 1996 WL 417519 (S.D.N.Y July 25, 1996) (insured's claims under the New York insurance code were within ERISA's Savings Clause, the case was remanded to the state court). Under the Fourth Circuit's approach, every one of these ten decisions is simply wrong.

The Fourth Circuit's decision in this case is also implicitly in conflict with the holding and approaches of numerous state appellate courts. As set forth above, under the Fourth Circuit's categorical approach, federal courts have exclusive jurisdiction over the claims of every ERISA plan member under any state law regulating the business of insurance. Accordingly, under that approach, no state court should ever address the merits of any plan member's argument that some claim is within ERISA's Savings Clause. Notwithstanding the Fourth Circuit's logic, a number of state appellate courts have addressed such issues and have held that claims were saved under ERISA's Savings Clause. *See, e.g., Harvey v. Members Employees Trust for Retail Outlets*, 748 N.E.2d 1061 (N.Y. 2001) (claims based upon mandated coverage statute saved from preemption by ERISA); *Bennett v. Indiana Life and Health Ins. Guaranty Ass'n*, 688 N.E.2d 171 (Ind. Ct. App. 1997) (Insurance Commissioner order requiring guaranteed payments in case of

insolvency within ERISA's Savings Clause); *Greenville Hosp. System v. Provident Life & Acc. Inc. Co.*, 499 S.E.2d 232 (S.C. Ct. App. 1999) (statute requiring succeeding carrier to cover participant in prior plan at certain level of benefits was saved from preemption); and *Kavelaris v. MSI Ins. Co.*, 631 N.W.2d 665 (Wis. Ct. App. 2001) (the state's "make whole" doctrine limiting the amount of subrogation that an insurer could claim was not preempted because it was within ERISA's Savings Clause). Under the Fourth Circuit's approach, none of these decisions could have been reached because none of these courts had jurisdiction to even consider these questions.

In short, the interrelationship between ERISA's Savings Clause and ERISA's Enforcement Clause continues to trouble and confuse the lower courts. This Court should grant *certiorari* to resolve this question and to eliminate this confusion.

B. This Court Has Noted the Importance of the Question of How ERISA's Savings Clause and Enforcement Clause Interrelate, But Has Not Yet Resolved that Question.

This Court has taken note of the complex relationship between ERISA's Savings Clause and its Enforcement Clause, but has not resolved the subject. *See, e.g., UNUM Life Ins. Co. of America v. Ward*, 119 S. Ct. 1380, 1390 (1999):

> UNUM next contends that [ERISA's Enforcement Clause] preempts any action for plan benefits brought under the state rules such as notice-prejudice. Whatever the merits of UNUM's view of § 502(a)'s preemptive force, the issue is not implicated here.

(Footnote omitted). In this case, by contrast, the issue of how these provisions interact is not only implicated, it is central.

In *Rush Prudential HMO, Inc. v. Moran*, 122 S. Ct. 2151 (2002), this Court made a comment in dicta about the apparent impact of the Enforcement Clause on complete preemption in a Savings Clause case. Even though this Court held that the plaintiff's claims fell within the Savings Clause, this Court noted that the district court's decision to remand the case was "questionable." *Moran*, 122 S. Ct. at 2157 n. 2. In *Arana*, which involved insureds bringing claims under a state anti-subrogation statute much like the one involved in this case, the Fifth Circuit took the equivical comment in footnote 2 of *Rush Prudential* as resolving the issues posed in this Petition in favor of complete preemption. 338 F.3d at 440. The Fifth Circuit's conclusion in this respect ignores great differences between the *Rush Prudential* case and the facts of *Arana* itself and of this case. In *Rush Prudential*, the plan promised coverage for "medically necessary" services, 122 S. Ct. at 2156, and the plaintiff's complaint sought "reimbursement for the surgery as 'medically necessary' under Illinois's HMO Act." *Id.* at 2156. Accordingly, this Court not surprisingly characterized the claim as "akin to a suit to compel compliance with the terms of a plan. . . ." *Id.* at 2157 n. 2. In this case, by contrast, as discussed below, the actual terms of the plan permit, rather than forbid, subrogation. This Court's comments in *Rush Prudential* shed no light on the situation here – where state law forms the basis of plaintiff's claims and the relief sought is directly contrary to the actual written terms of the plan. This Court should grant this Petition to clear up the confusion that has arisen from the statement in footnote 2 of *Moran*.

II. THERE IS A SPLIT AMONG THE CIRCUITS OVER WHETHER CLAIMS BASED SOLELY ON STATE LAW WITHOUT REFERENCE TO PLAN TERMS FALL WITHIN ERISA'S ENFORCEMENT CLAUSE.

ERISA's Enforcement Clause creates a cause of action for a plan beneficiary seeking "to recover benefits due to him *under*

the terms of his plan, to enforce his rights *under the terms of the plan*, or to clarify his rights to future benefits *under the terms of the plan*." 29 U.S.C. §1132(a) (emphasis added). For a cause of action to arise under §1132(a), it must seek enforcement of the beneficiaries' rights under the plan. In short, a §1132(a) action is in the nature of a contract dispute, asking the question, "What benefits do the terms of this plan provide?"

This case is *not* such a dispute. Ms. Singh's case does not fall within § 1132(a), because she is not attempting to enforce her rights or to clarify her benefits under actual terms of her ERISA plan. Rather, she argues that the written terms of her plan are illegal under the Maryland HMO Act. The Fourth Circuit held, however, that even these claims fit within ERISA's Enforcement Clause because the phrase "the terms of the plan" in ERISA's Enforcement Clause does not merely refer to the actual terms of the plan, but also refers to any laws that apply to the terms of any ERISA plan.

The Fourth Circuit's expansive approach is counter to the holdings of a number of U.S. Courts of Appeal which have found that various state law claims did not constitute claims under ERISA's Enforcement Clause. In *Dukes v. U.S. Healthcare, Inc.*, 57 F.3d 350 (3d Cir. 1995), the court rejected the assertion that a medical malpractice claim arising under state law fell within §1132, noting that §1132 is focused upon the benefits and rights under the terms of the plan itself. Under the approach of the Fourth Circuit here, the court in *Dukes* should have held that the state's laws of medical negligence were automatically incorporated into the plan, and therefore the plaintiff's claims should have fallen within ERISA's Enforcement Clause. Unlike the Fourth Circuit, however, the court in *Dukes* rejected the argument that a medical negligence case somehow involved a claim to recover benefits due under the plan. "On its face, a suit 'to recover benefits due . . . under the terms of [the] plan' is concerned exclusively with whether

or not the benefits due under the plan were actually provided." 57 F.3d at 357.

The Sixth Circuit has also rejected the notion that ERISA automatically incorporates all state laws. In *International Resources, Inc. v. New York Life Ins. Co.*, 950 F.2d 294 (6th Cir. 1992), the Court of Appeals found that the plaintiff's claims under a Kentucky statute prohibiting unfair and deceptive acts by insurers were within ERISA's Savings Clause. When the insurer argued that those claims were nonetheless preempted by ERISA's Enforcement Clause (as interpreted by this court in *Pilot Life*), the Sixth Circuit rejected the idea that the Enforcement Clause incorporated the state cause of action:

> Thus, because we cannot fairly assume the activity Kentucky is regulating through its conversion statute is protected or guaranteed by an ERISA remedy, the *Pilot Life* analysis is inapplicable and the Kentucky statute survives preemption.

International Resources, 950 F.2d at 301. In *Warner v. Ford Motor Co.*, 46 F.3d 531 (6th Cir. 1995), similarly, the Court of Appeals held that the plaintiffs brought "a straight state age discrimination case which has no counterpart or superseding cause of action in ERISA." *Warner*, 46 F.3d at 534. Under the Fourth Circuit's approach in this case, the state statute should have been "transformed" into a federal claim under ERISA's Enforcement Clause. The Sixth Circuit (en banc) reached the opposite conclusion, however, and held that plaintiff's claims "ha[d] none of the characteristics of a § 1132(a)(1)(B) action to enforce the ERISA agreement," and the case was not preempted. *Id.*, 46 F.3d at 534.

Finally, while these cases do not pose a circuit split on the facts and issues posed by this case, several other Courts of Appeals have generally held that the Enforcement Clause

should be construed narrowly. *See Allstate Ins. Co. v. 65 Sec. Plan*, 879 F.2d 90, 94 (3rd Cir. 1989); *Gulf Life Ins. Co. v. Arnold*, 809 F.2d 1520, 1524 (11th Cir. 1987). It is indisputable that the Fourth Circuit's reading of the clause in this case is anything but narrow.

III. THE FOURTH CIRCUIT'S DENIAL OF PLAINTIFF'S MOTION TO REMAND IN THIS CASE IS IN ERROR AND SHOULD BE REVERSED.

The Fourth Circuit's position is a sweeping, even radical expansion of federal authority under ERISA, and is in error. The Fourth Circuit transforms broad areas of state law into federal law in a manner that is not supported by basic principles of federal preemption law and which contradicts the structure of ERISA. Under the Fourth Circuit's approach, there is now exclusive federal jurisdiction over every imaginable lawsuit brought by a plan member based upon a state law regulating the business of insurance, and a host of garden-variety state insurance law cases that are handled perfectly well by state courts will necessarily all be moved into already busy federal courts.

There is no justification for the great infringement upon state law mandated by the Court of Appeals' decision. As this Court has made clear, ERISA should only be found to preempt state law when the grounds for preemption are extremely clear. *See De Buono v. NYSA-ILA Medical and Clinical Servs. Fund*, 520 U.S. 806, 815 (1997) ("Respondents therefore bear the considerable burden of overcoming 'the starting presumption that Congress does not intend to supplant state law.'") (citation omitted); *Pegram v. Hertrich*, 530 U.S. 211, 237 (2000) ("in the field of health care, a subject of traditional state regulation, there is no ERISA preemption without clear manifestation of congressional purpose.").

The Court of Appeals' decision in this case fails these tests. Congress never clearly manifested anything approaching an intention to completely preempt all state laws in this area. As this Court has made clear, there are two recognized situations where federal law completely preempts state law: "when Congress expressly so provides, . . . or when a federal statute wholly displaces the state-law cause of action through complete preemption." *Beneficial Nat'l Bank v. Anderson*, 123 S. Ct. 2058, 2063 (2003). State courts may only be sidestepped in our federal system when one of these two conditions is present.

The enormous expansion of federal jurisdiction and the sweeping preemption of state law contained in the Court of Appeals' decision is not justified by any of these rationales. First, it can scarcely be claimed that plaintiff's claims are expressly preempted, when (as the Court of Appeals recognized) those claims fall within a Savings Clause that carves those claims out from the Act's express preemption provision.

Second, while this Court did hold that ERISA completely preempts the entire field of regulation in certain circumstances, it did so in a setting that did not involve ERISA's Savings Clause. *See Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987). As this Court has recognized, ERISA's Savings Clause "substantially qualifie[s]" ERISA's Preemption Clause. *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 733 (1985). It is incoherent to suggest that Congress intended to completely preempt a field of law but also intended for substantive state regulations in that field to survive.

In the field of conflict (as opposed to complete preemption), implied preemption arises only when there is an "actual conflict" between federal and state law, either because it would be "impossible for a private party to comply" with both

or because the state law "stands as an obstacle to the accomplishment and execution of the full purposes of Congress." *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995). When this Court briefly discussed complete preemption in footnote 2 of the *Rush Prudential* case, it appeared that this Court was indicating that complete preemption was appropriate there because otherwise a state action would conflict with ERISA's Enforcement Clause. *Moran*, 122 S. Ct. at 2157 n. 2.

It cannot seriously be maintained that it would stand as an obstacle to Congress's intentions to allow a Maryland state court to adjudicate claims brought under the anti-subrogation provisions of the Maryland HMO Act. There is no actual conflict in this case, as ERISA embodies no substantive rule with respect to subrogation. *See Member Servs. Life Ins. Co. v. American Nat'l Bank and Trust Co. of Sapulpa*, 130 F.3d 950, 958 (10th Cir. 1997) ("ERISA says nothing about subrogation provisions. ERISA neither requires a welfare plan to contain a subrogation clause nor does it bar such clauses or otherwise regulate their content."), *quoting Ryan v. Federal Express Corp.*, 78 F.3d 123, 127 (3d. Cir. 1996). In addition, as the Court of Appeals noted below, the plaintiffs seek no remedy beyond those provided by ERISA.

The only argument that complete preemption is required here to keep state law from serving as an obstacle to federal law depends upon the Fourth Circuit's odd reading of ERISA's Enforcement Clause. The argument runs something like this: it conflicts with ERISA's plan for any state court to hear a claim falling within ERISA's Enforcement Clause, and any possible state law claim against an ERISA plan will always be within ERISA's Enforcement Clause. But as Part II above establishes, and as the Third and Sixth Circuits have held, the Enforcement Clause involves claims seeking to recover benefits or enforce or clarify rights "under the terms of the plan," and not every state law claim is such a claim. No equivalent to the

Anti-Subrogation Provisions of the Maryland HMO Act can be found in the plan. The complaint cites to no provision or section of the plan as the source of the plaintiff's claims. Plaintiff's cause of action entirely arises from a legal authority that is outside of and independent from the plan. Similarly, Ms. Singh is not seeking to clarify her rights to future benefits under the terms of the plan. None of the terms of the plan are in dispute. No court resolving the plaintiff's claims would be required to "construe" the plan – its provisions are unambiguous. No court resolving the plaintiff's claims would be required to enforce or clarify the participants' benefits under the terms of the plan. Instead, Ms. Singh is asking a Maryland state court to apply a Maryland statute regulating insurance. There is no basis to suggest that permitting a state court to adjudicate such a state law cause of action would stand as an obstacle to ERISA's Enforcement Clause.

The Fourth Circuit's decision also is counter to the structure of ERISA. In *Pilot Life*, this Court concluded that Congress intended federal courts to have exclusive jurisdiction of claims within ERISA's Enforcement Clause, as a means of ensuring that the Enforcement Clause would be given a uniform treatment nationwide. ERISA's Savings Clause, however, represents an exception to the rule of federal uniformity. As this Court has noted, the existence of the Savings Clause will sometimes result in disuniformities between states, but has held that "[s]uch disuniformities . . . are the inevitable result of the congressional decision to 'save' local insurance regulation." *Rush Prudential HMO*, 122 S. Ct. at 2167 (citation omitted).

It is counter to the idea of the Savings Clause to suggest that Congress intended to federalize causes of action whose sole origin lies in state laws that are traditionally within the purview of state governments *and* that Congress chose to save from federal preemption. Moving all cases involving state insurance regulations into already very busy federal courts serves no

federal purpose. Putting cases arising under state law into federal court does not serve any purpose of uniformity, because the substance of the cause of action is dictated by state laws that can and do differ from state to state. The automatic redistribution of these differing state laws disrespects the states and contradicts fundamental principles of federalism.

The Court of Appeals' decision also gives rise to a series of anomalies. First, under the Fourth Circuit's approach, federal courts will dictate the substantive content of all state laws that regulate the business of insurance. In the leading Maryland case dealing with the Maryland HMO Act, the state court engaged in an extensive discussion of the state statute's multiple interlocking provisions, its legislative history, and its relation to decades of state common law relating to the collateral source doctrine. *Riemer v. Columbia Medical Plan*, 358 Md. 222, 747 A.2d 677 (2000). There is no conceivable reason why Congress would have insisted that only federal courts should be permitted to so explicate or develop state law. Second, under the Fourth Circuit's approach, federal courts expounding upon the new federal law will be responsible for developing diverse, non-uniform law. Instead of federal law being truly national law, the Fourth Circuit's approach would necessarily result in federal courts issuing decisions resulting in different results and different policies in different states, because the substance of these laws will be dictated by state law.

The enormous expansion of federal jurisdiction – and the enormous narrowing of the field of state law – embraced by the Court below finds no justification in the law of federal preemption, in the structure or purposes of ERISA, or in common sense and logic. This Court should clarify that claims falling within ERISA's Savings Clause, that do not involve the enforcement or interpretation of the actual terms of the ERISA plan itself, are not completely preempted.

CONCLUSION

This petition for writ of *certiorari* should be granted.

Respectfully submitted,

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PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SABRIYANA M. SINGH, *Plaintiff-Appellant*, v. PRUDENTIAL HEALTH CARE PLAN, INCORPORATED, t/a Prudential Insurance Companies of America, t/a Prudential Health Care Plan of the Mid-Atlantic, *Defendant-Appellee.*	No. 01-1102

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
Alexander Williams, Jr., District Judge.
(CA-00-2168-AW)

Argued: February 24, 2003

Decided: July 3, 2003

Before NIEMEYER, MICHAEL and KING, Circuit Judges.

Affirmed in part, reversed in part, and remanded by published opinion. Judge Niemeyer wrote the opinion, in which Judge Michael and Judge King joined.

COUNSEL

ARGUED: Frank Paul Bland, Jr., TRIAL LAWYERS FOR PUBLIC JUSTICE, Washington, D.C., for Appellant. Daly D.E. Temchine, EPSTEIN, BECKER & GREEN, P.C.,

Washington, D.C., for Appellee. **ON BRIEF:** Kathy C. Potter, EPSTEIN, BECKER & GREEN, P.C., Washington, D.C., for Appellee.

OPINION

NIEMEYER, Circuit Judge:

Sabriyana Singh commenced this action in State court against Prudential health Care Plan, Inc., a health maintenance organization, seeking primarily reimbursement of monies paid to Prudential pursuant to a subrogation term in its policy that was issued as an employee benefit plan. Singh's complaint alleged that the subrogation term was illegal under the provisions of the Maryland Health Maintenance Organization Act (the "HMO Act"), Md. Code Ann., Health-Gen. II § 19-701 *et seq.*, that have been construed by the Maryland Court of Appeals in *Riemer v. Columbia Medical Plan, Inc.*, 747 A.2d 677 (Md. 2000), to prohibit HMOs from pursuing subrogation with respect to their members' claims against third parties. Prudential removed the case to federal court, asserting that Singh's claims based on State law were completely preempted by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, and then moved to dismiss Singh's complaint. Singh filed a motion to remand the case to State court. The district court denied Singh's motion to remand and granted Prudential's motion to dismiss the complaint.

Because we agree with the district court that ERISA completely preempts Singh's state-law claims, we affirm the district court's denial of Singh's motion to remand. We reverse, however, its order dismissing Singh's claims, holding

that they must be taken as ERISA claims and resolved under § 502(a) of ERISA.

I

After Sabriyana Singh was involved in an automobile accident in March 1998, Prudential Health Care Plan, Inc. ("Prudential"), an HMO with whom Singh's employer contracted to provide healthcare benefits under an employee benefit plan, paid Singh $950.12 in respect to injuries sustained in the accident. Singh also made a claim against the other party to the accident, and in settlement of that claim, Allstate Insurance Company paid Singh $5,000 in February 1999. Based on a term of the employee benefit plan permitting Prudential, through subrogation, to assert members' claims against third parties for reimbursement of benefits paid, Prudential asserted a subrogation claim against the $5,000 for reimbursement of the $950.12 payment that it had earlier made to Singh, and in September 1999 Singh paid the subrogation claim.

Contending that the Prudential plan's subrogation provision was illegal under the Maryland HMO Act, Singh commenced this action in State court as a class action, alleging under the State common law that Prudential was unjustly enriched and that it negligently misrepresented its right to subrogation. For relief, she sought (1) a declaratory judgment in the subrogation provision in the Prudential plan was illegal under the Maryland HMO Act, (2) an equitable award of restitution for subrogation amounts already paid by HMO members, (3) compensatory damages, and (4) an injunction directing Prudential to "cease and desist from asserting a subrogation interest in and a lien against any third-party recoveries" and prohibiting it from "increasing premiums, co-

payments, or other charges to recover the losses incurred in connection with this litigation."

The Maryland HMO Act, on which Singh relied in her complaint, regulates any person or organization that provides its members with healthcare services on a "prepaid basis." *See* Md. Code Ann., Health-Gen II § 19-701(f). Based on an HMO's provision of healthcare on a *prepaid* basis, the Maryland Court of Appeals construed the HMO act to prohibit HMOs from "pursu[ing] its members for restitution, reimbursement, or subrogation after the members have received damages from a third-party tortfeasor,." *Riemer v. Columbia Medical Plan, Inc.* 747 A.2d 677, 697 (Md. 2000). Accordingly, if Maryland law were to apply, the provision of the Prudential plan that authorizes Prudential to pursue a subrogation claim with respect to benefits it provided under the plan would be illegal.

In response to the holding of *Riemer*, the Maryland legislature enacted, and on May 18, 2000, the governor signed, Senate Bill 903 to provide that an HMO is authorized to pursue subrogation with respect to members' recoveries from third parties. That legislation was made effective June 1, 2000, and provided that it would apply retroactively to all subrogation recoveries by HMOs since January 1, 1976. After the proceedings in this case were completed before the district court, the Maryland Court of Appeals held that the provision of Senate Bill 903 authorizing retroactive subrogation by HMOs violated the Maryland Constitution. *Harvey v. Kaiser Foundation Health Plan*, 805 A.2d 1061 (Md. 2002). Consequently, as Maryland law now stands, the subrogation prohibition of the HMO Act remained applicable until June 1, 2000.

In response to Singh's complaint, Prudential filed a notice of removal to federal court, pursuant to 28 U.S.C. §§ 1331 and 1441, asserting that the employee benefit plan in this case was regulated by ERISA and not by State law.

Singh filed a motion to remand to State court, arguing that her complaint arose under State law regulating insurance that was saved from preemption under ERISA's "saving clause," § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A), and that her claims did not seek impermissible alternative remedies to ERISA's enforcement provisions, § 502(a), 29 U.S.C. § 1132(a). Prudential filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), contending that Singh's complaint failed to state a claim under ERISA upon which relief could be granted. Following a hearing on the motions, the district court issued an oral ruling denying Singh's motion to remand because her claims required interpretation of the terms of an ERISA plan and were completed preempted under § 502(a) of ERISA. The district court apparently rejected Singh's argument that the State law on which her claims were based was "saved" from preemption under § 514(b)(2)(A). Because of this, the court dismissed Singh's claims, presumably because state-law claims relating to an ERISA plan that are not saved from preemption under § 541(b)(2)(A) must be dismissed. As an additional basis for its dismissal, the court noted that Senate Bill 903 was "clear on its face" in allowing retroactive subrogation by HMOs, and that plaintiff would, therefore, be unable to get any relief in any court. The court did not, of course, have the benefit of the Maryland Court of Appeals' *Harvey* decision holding the retroactivity provision of Senate Bill 903 unconstitutional. In view of the district court's apparent ruling that the HMO Act was not saved under § 541(b)(2)(A), the role of its commentary on the preempted State law, including Senate Bill 903, was not made clear.

From the district court's order denying remand and dismissing the complaint, Singh appealed.

II

Singh contends that her State common-law claims seek only to enforce the antisubrogation provision of the Maryland HMO Act, which she argues is a State regulation of insurance that is "saved" from ERISA's preemption under the express terms of § 541(b)(2)(A). She argues, "ERISA has no application to this state law dispute, and thus dismissal and removal were improper and the case should be remanded immediately to the state court."

Prudential contends that Singh's complaint seeks state-law remedies for claims based on the HMO Act that are preempted and subject to the exclusive remedial provisions of § 502(a) of ERISA, and therefore her claims must, under the doctrine of "complete preemption," be treated as federal claims. Therefore, accordingly to Prudential, the action was properly removed. Prudential then argues, in the alternative and perhaps inconsistently, that Singh's claims cannot arise under the Maryland HMO Act because that Act does not create a private right of action. It asserts further that any common-law causes of action to enforce the subrogation prohibition of the HMO Act are preempted by § 514 of ERISA and thus should be dismissed.

In this appeal, we review the district court's order (1) denying Singh's motion to remand and (2) granting Prudential's motion to dismiss. To decide the remand issue, which actually involves Singh's challenge to removal jurisdiction, requires a determination of whether Singh's State common-law claims fall within the scope of ERISA's exclusive remedial scheme set

forth in § 502(a),29 U.S.C. § 1132(a), and therefore are completely preempted. As we explain herein, Singh's claims fall within the scope of § 502(a) if they are claims for benefits, entitlement to which must be determined by passing on the validity, interpretation or applicability of a term of an ERISA plan. Removal jurisdiction is only proper, then, if Singh's State common-law claims for unjust enrichment and negligent misrepresentation are, in fact, claims for benefits due under the terms of an ERISA plan. In this particular case, Singh's claims cannot be thought of as seeking enforcement of the terms of an ERISA plan unless a State law, the Maryland HMO Act, acts to define a term of the plan. Thus, our jurisdictional analysis must answer preliminarily what the terms of the plan are and only then may we proceed to determine whether Singh's claims are, in fact, claims for benefits due under the terms of the plan. In determining the HMO Act's impact on the plan at issue here, we take the course of analysis set forth in *Rush Prudential HMO v. Moran*, 536 U.S. 355 (2002), a case in which the claimant, like Singh here, sought reimbursement from an HMO, relying in part on the State HMO Act's impact on the plan. *See id.* (discussing the impact of a State HMO Act that was "saved" under ERISA § 514(b)(2)(A) on the terms of an ERISA plan and on the exclusive remedial scheme set forth in § 502(a)).

In Parts III and IV, therefore, we conduct the *Rush* analysis to determine whether the Maryland HMO Act's subrogation prohibition – on which Singh's State common-law claims depend – defines a term of the relevant plan through § 514(a) and (b)(2)(A) of ERISA. This requires us to determine whether the HMO Act itself is preempted by ERISA under the relevant statutory provisions and whether the HMO Act conflicts with ERISA's remedial scheme. Concluding that the HMO Act is "saved" from preemption as a State regulation of insurance and therefore is applied to negate the plan's subrogation term, we

assess, in Part V, whether Singh's claims for the return of funds under State common law are claims for entitlement to benefits under the *terms* of the plan was modified by the saved State law, such that the claim is "completely preempted."

In Part VI, after having concluded that the case was properly removed to federal court under the doctrine of complete preemption, we turn to the review of the district court's order dismissing the case.

III

The parties do not dispute that the Prudential plan, of which Singh is a participant, is an employee benefit plan regulated by ERISA. They differ on whether ERISA preempted the Maryland HMO Act, which would prohibit Prudential, an HMO subject to Maryland Regulation, from enforcing the subrogation provision in the Plan against Singh.

Section 514(a) of ERISA, containing the "preemption clause," provides:

> Except as provided in subsection (b) of this section, the pro-visions of this subchapter . . . shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan . . . .

29 U.S.C. § 1144(a). Defining the scope of this preemption by any State law that "relates" to any employee benefit plan, this preemption clause is recognized to be "broad" and "expansive." *Pilot Life Ins., Co. v. Dedeaux*, 481 U.S. 41, 47 (1987); *see also Cal. Div. of Labor Standards Enforcement v. Dillingham Constr. N.A., Inc.*, 519 U.S. 316, 324 (1997) (reviewing the Court's many previous acknowledgments that ERISA's

preemption provision is "clearly expansive," has a "broad scope" and an "expansive sweep," is "broadly worded," "deliberately expansive," and "conspicuous for its breadth").

Subsection (b) referred to in § 514(a) contains the "saving clause," which excepts from the preemption clause any State law regulating, among other things, insurance. It provides:

> Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

29 U.S.C. § 1144(b)(2)(A). The scope of the saving clause is limited by the "deemer clause," subparagraph (B) referred to in the saving clause, which provides:

> Neither an employee benefit plan . . . nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer . . . or to be engaged in the business of insurance . . . for purposes of any law of any State which regulates insurance, banking, or securities.

29 U.S.C. § 1144(b)(2)(A). The scope of the saving clause is limited by the "deemer clause," subparagraph (B) referred to in the saving clause, which provides:

> Neither an employee benefit plan...nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer...or to be engaged in the business of insurance...for purposes of any law of any State purporting to regulate insurance companies [or] insurance contracts.

29 U.S.C. § 1144(b)(2)(B).

We apply these provisions of § 514 sequentially in determining whether the subrogation prohibition of the Maryland HMO Act is preempted by ERISA.

First, the parties do not dispute that the provisions of the Maryland HMO Act that have been construed to prohibit subrogation by HMOs prior to June 2000 "relate to" an employee benefit plan for the purposes of § 514(a). Indeed, both the Supreme Court and this court, recognizing the expansive sweep of § 514 (a) preemption, have held that State antisubrogation laws "relate to" an employee benefit plan. *FMC Corp. v. Holliday*, 498 U.S. 52, 58 (1990) ("Pennsylvania's antisubrogation law 'relate [s] to' an employee benefit plan"); *Hampton Indus., Inc. v. Sparrow*, 981 F.2d 726, 729 (4th Cir. 1992) (holding that a North carolina law limiting subrogation "'relate[s] to' an employee benefits plan within the meaning of the preemption clause").

The more complex question is whether the saving clause, § 514(b)(A), excepts from application of the preemption clause the State subrogation prohibition on the basis that the prohibition "regulates insurance." Prudential argues that the saving cause does not apply here for two reasons. First, it argues that the Maryland HMO Act is not a regulation of insurance because it regulates HMOs, and under Maryland law, HMOs are classified as healthcare providers rather than insurers. Second, it argues more broadly that, in any event, antisubrogation laws are not regulations of insurance.

Neither of Prudential's arguments is persuasive. Prudential's first argument - that the Maryland HMO Act does not regulate insurance because HMOs are not considered

insurers in Maryland - is based principally on the fact that the HMO Act is located in the Maryland Health-General Article of the Maryland Cod. Prudential points to statutory language providing that "the General Assembly intends to...exempt health maintenance organizations from the insurance laws of this state, except as set forth in this subtitle." Md. Code Ann., Health-Gen. II § 19-702. But the exception at the end of the quoted language indicates that HMO's are not categorically exempted from insurance laws. Nor need it mean that the HMO Act does not, or any law concerning HMO's could not, provide its own form of insurance law.

More fundamentally, Prudential's argument fails because it wanders from the guidepost established by the Supreme Court for determining the applicability of the saving clause, advancing instead a formalistic argument that has already been rejected. The Supreme Court recently clarified the test for determining the applicability of the saving clause, reducing it to two factors:

> First, the state law must be specifically directed toward entities engaged in insurance. Second . . . the state law must substantially affect the risk pooling arrangement between the insurer and the insured.

Kentucky's Ass'n of Health Plans, Inc. v. Miller, 123 S. Ct. 1471, 1479 (2003) (citation omitted). In so holding, the Court in *Miller* made "a clean break from the McCarran-Ferguson factors" that previously served as "considerations" in the saving-clause analysis but which ultimately "added little to the relevant analysis." *Id.* At 1478-79. Nonetheless, it retained the mandate to focus not on how a regulated entity is classified, but on whether the State law is aimed at the provision of insurance.

In *Metropolitan Life Insurance Co. v. Massachusetts*, for

example, the insurer argued that a Massachusetts law requiring certain mental health coverage was "in reality a health law that merely operates on insurance contracts to accomplish its end, and that it [was] not the kind of traditional insurance law intended to be saved by § 514 (b)(2)(A)." 471 U.S. 724 (1985). The Supreme Court found this argument "unpersuasive", and stated that Congress did not distinguish between "traditional and innovative insurance laws." *Id.*; *see also id.* ("Appellants assert that...laws that regulate the substantive terms of insurance contracts are more recent innovations more properly seen as health laws rather than as insurance laws, which § 514(b)(2)(A) does not save. This distinction reads the saving clause our of ERISA entirely").

More recently, in *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 366 (2002), an HMO proffered a similar argument:

> Rush contends that seeing an HMO as an insurer distorts the nature of an HMO, which is, after all, a health care provider, too. This, Rush contends, should determined its characterization, with the consequence that regulation of an HMO is not an insurance regulation within the meaning of ERISA.

The Court, however, rejected this argument:

> The answer to Rush is, of course, that an HMO is both: it provides health care, and it does so as an insurer. Nothing in the saving clause requires an either-or choice between health care and insurance in deciding a preemption question, and as long as providing insurance fairly accounts for the application of state law, the saving clause may apply.

Id. at 367.

Thus, we reject Prudential's argument that the subrogation prohibitions is not saved because HMOs should not be considered insurers.

Prudential's second argument maintains that, even under the framework established by the Supreme Court, the antisubrogation provisions of the Maryland HMO Act are not "saved" from preemption because "subrogation laws are not laws that regulate the business of insurance." When making this argument, Prudential did not have the benefit of *Miller*, where the Supreme Court jettisoned the portion of the saving-clause analysis that, applying the McCarran-Ferguson factors, focused on whether the state law regulated the "business of insurance":

> Rather than concerning itself with whether certain practices constitute "[t]he business of insurance," or whether a state law was "enacted . . . *for the purpose of* regulating the business of insurance," [§ 514(b)(2)(A)] asks merely whether a state law is a "law . . . which regulates insurance, banking, or securities."

123 S. Ct. At 1478. But even before *Miller*, which did not work any fundamental change in the substance of saving-clause analysis, both the Supreme Court and this court rejected Prudential's argument. In *FMC Corp. v. Holliday*, the Supreme Court dealt precisely with the question of whether a State antisubrogation law was saved from preemption under § 514(b)(2)(A), and held that it was:

> There is no dispute that the Pennsylvania

> [antisubrogation] law falls within ERISA's insurance saving clause . . . [The antisubrogation law] directly controls the terms of insurance contracts by invalidating any subrogation provisions that they contain. It does not merely have an impact on the insurance industry; it is aimed at it. This returns the matter of subrogation to state law. Unless the statute is excluded from the reach of the saving clause by virtue of the deemer clause, therefore, it is not pre-empted.

498 U.S. at 60-61 (citations omitted). Following *FMC Corp.*, we noted that "limits on subrogation recoveries appear to be aimed at the insurance industry, and therefore would also appear to come within the scope of the saving clause." *Hampton Indus., Inc.*, 981 F. 2d at 729-30 (holding that the State law limiting subrogation was not saved, however, because of the applicability of the deemer clause).

Controlled by the holding of *FMC Corp.* and consistent with our observation in *Hampton Industries*, we conclude that the subrogation prohibition of the Maryland HMO Act applicable before June 2000 is a state-law regulation of insurance that is saved from preemption under § 514(b)(2)(A). But notwithstanding the holding of *FMC Corp.*, it is difficult to imagine an antisubrogation law of this type as anything other than an insurance regulation, as it addresses who pays in a given set of circumstances and is therefore directed at spreading policyholder risk. *See Miller*, 123 S. Ct. At 1479 (directing focus on whether the State law is "specifically directed toward entities engaged in insurance" and "substantially affect[s] the risk pooling arrangement between the insurer and the insured").

While the application of the saving clause is limited by the

deemer clause, Prudential abandoned its argument made below that the deemer clause is applicable. The deemer clause operates to "exempt *self-funded* ERISA plans from State laws that 'regulat[e] insurance' within the meaning of the saving clause." *FMC Corp.*, 498 U.S. at 61 (emphasis added). Because the Prudential plan at issue here is an insured plan, the deemer clause does not operate to exempt it from application of the HMO Act, which is saved under § 514(b)(2)(A).

In sum, we agree with Singh that the saving clause contained in § 514(b)(2)(A) appears to exempt the subrogation prohibition of the Maryland HMO Act from preemption by ERISA. But reaching this tentative conclusion does not end the inquiry because we must still assess whether the otherwise saved State law nonetheless frustrates the overall purposes of ERISA by inappropriately supplementing or supplanting ERISA's exclusive remedies. *See Conover v. Aetna US Health Care, Inc.*, 320 F.3d 1076, 1078 (10th Cir. 2003) ("A state law otherwise regulating insurance within the meaning of § 514(b)(2)(A) may still be preempted if it allows plan participants and beneficiaries 'to obtain remedies under state law that Congress rejected in [ERISA]'" (citations omitted)).

IV

The Supreme Court has recognized a "limited exception from the saving clause" created by the "overpowering" reach of § 502 (a) of ERISA, in which Congress set forth the *exclusive* remedies available for claims relating to employee benefit plans. *Rush*, 536 U.S. at 381, 375. The Supreme Court concluded that State laws regulating insurance could be applied to ERISA plans, but only so long as doing so would not undermine the objectives of § 502 (a). *Id.* at 387; *id.* at 377 ("Although we have yet to encounter a forced choice between

the congressional policies of exclusively federal remedies and the 'reservation of the business of insurance to the States,' we have anticipated such a conflict, with the state insurance regulation losing out if it allows plan participants 'to obtain remedies . . . that Congress rejected in ERISA'" (citations omitted)).

In *Rush*, the Court was presented with a State law that authorized HMO members to demand an independent medical review of a decision to deny coverage for a procedure deemed by the HMO to be medically unnecessary. Concluding that this law was exempt from preemption by the saving clause and did not create a new claim or enlarge the remedies prescribed by § 502(a), the Court held that the saved State law did not interfere with § 502 (a) and therefore would be enforced as part of an ERISA plan. The Court explained that the saved State law did not create a conflicting enforcement scheme or an arbitration system that would supplement the specific remedies prescribed by § 502 (a), but rather provided a standard for making medical judgments:

> The practice of obtaining a second opinion . . . is far removed from any notion of an enforcement scheme, and once [the State law] is seen as something akin to a mandate for a second-opinion practice in order to insure sound medical judgments, the preemption argument that arbitration under [the State law] supplants judicial enforcement runs out of steam.
>
> * * *
>
> This case therefore does not involve the sort of additional claim or remedy exemplified in *Pilot Life*, *Russell*, and *Ingersoll-Rand*, but instead bears a

> resemblance to the claims-procedure rule that we sustained in *UNUM Life Insurance Co. of America v. Ward*, 526 U.S. 358 (1999), holding that a state law barring enforcement of a policy's time limitation on submitting claims did not conflict with § 1132 (a) [§ 502(a) of ERISA], even though the state "rule of decision," *id.*, at 377, could mean the difference between success and failure for a beneficiary. The procedure provided by [the State law] does not fall within *Pilot Life's* categorical preemption.

Rush, 536 U.S. at 383-84, 380.

Thus, while a State law purporting to supply additional *remedies* to claimants under ERISA plans would impermissibly compete with § 502(a) remedies, and therefore not be saved from preemption as a result of the limited exception from the saving clause, a State law simply mandating or prohibiting certain terms of policy coverage does not force a choice between State regulation of insurance and the prescribed remedies of § 502(a) and therefore may be saved under § 514(b)(2)(a). *Compare Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 145 (1990) (holding preempted State law that "purports to provide a *remedy* for the violation of a right expressly guaranteed by [ERISA] and exclusively enforced by § 502(a)" (emphasis added)), *and Pilot Life*, 481 U.S. 41 (holding that, in light of the exclusive § 502(a) remedies, a State breach-of-contract claim that could result in punitive damages – a remedy not available to the claimant under the relevant ERISA provisions – was not saved under § 514(b)(2)(A)), *with Rush*, 536 U.S. at 355, 379-80 (holding that a State law giving HMO members a right to independent review of certain denials of benefits was saved from preemption because, although the State law replaced a term of the insurance

contract, "the relief ultimately available would still be what ERISA authorizes in a suit for benefits under § [502(a)]"), *and Metropolitan Life*, 471 U.S. 724 (holding that a State law mandating that insurance policies provide certain mental health coverage was saved from preemption under the saving clause). Thus, although a State law may not supplement or supplant § 502(a) remedies available to ERISA participants and beneficiaries for claims regarding plan benefits, see *Pilot Life*, 481 U.S. at 56, it makes "scant sense" to suggest that States are "powerless to alter the terms of the insurance relationship in ERISA plans," *UNUM Life Ins. Co. v. Ward*, 526 U.S. 358, 375-76 (1999); *see also Metropolitan Life*, 471 U.S. at 744 ("Nor is there any contrary case authority suggesting that laws regulating the terms of insurance contracts should *not* be understood as laws that regulate insurance").

The State regulation of insurance at issue here – the subrogation prohibition of the Maryland HMO Act – is substantially farther removed from any conflict with § 502(a) than was the second-opinion procedure in *Rush*. Indeed, Prudential argues that the subrogation prohibition does not create any right of action under the State HMO Act or under State common law.* Regardless of whether this is correct, the subrogation prohibition that is saved is not integrally related to the enforcement scheme for violation of the Maryland HMO Act and thus stands on its own as a substantive provision governing the allocation of risk assumed by an HMO contract.

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* Prudential may not be totally accurate in this contention, however. In regulating HMOs, the Maryland HMO Act creates a complaint system within the agency structure for correcting violation of the Act's provisions, and the Act authorizes the issuance of administrative orders that may be appealed administratively and to the courts.

In that regard, it creates no conflict with ERISA's exclusive provision of remedies under § 502(a). While ERISA's civil enforcement scheme contained in § 502(a) creates an exclusive set of remedies that even a state regulation of insurance may not supplement or supplant, ERISA "contains almost no federal regulation of the terms of benefit plans," *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. at 732, that would conflict with a substantive provision such as the subrogation prohibition.

Prudential's argument that the Maryland HMO Act's subrogation prohibition provisions supply a prohibited alternative remedy to the exclusive remedial scheme set forth in § 502(a) is not persuasive. The antisubrogation provision does not depend on any particular remedy but operates simply to define the scope of a benefit provided to members of HMOs in Maryland – i.e., entitlement to retain their full benefit and not have it reduced by recoveries from third parties. In this sense, it does not differ from any other State law mandating or regulating a contractual benefit. Thus, although the HMO Act negates the subrogation term of the plan here, it does not supply a prohibited alternative remedy, and "the relief ultimately available would still be what ERISA authorizes in a suit for benefits under § [502(a)]." *Rush*, 536 U.S. at 680. When describing the prohibited alternative remedy that it argues the HMO Act supplies, Prudential describes that remedy as "entitle[ment] under [Singh's] Plan to receive the benefit of having her healthcare paid for by Prudential." But this argument ignores the distinction between defining a *benefit* and *remedying* improper administration or denial of a defined benefit, such that, under Prudential's logic, any State law defining a plan member's entitlement to certain benefits could not be saved from preemption. This logic has no basis in law and makes "scant sense." *UNUM Life*, 526 U.S. at 375.

Because we conclude that the subrogation prohibition of the Maryland HMO Act does not supplement or supplant ERISA's exclusive remedies by creating a "prohibited alternative remedy," *Rush*, 536 U.S. at 379, it remains "saved" and therefore "supplies the relevant rule of decision" in a § 502(a) claim to enforce the provision of State law, *UNUM Life*, 526 U.S. at 377. A State law preserved as a regulation of insurance under § 514(b)(2)(A) may supply a substantive term or mandate a benefit in an employee benefit plan, but once that term or benefit becomes part of the plan, a suit to enforce it may only be brought under § 502(a). *See Fink v. Dakotacare*, 324 F.3d 685, 689 (8th Cir. 2003) (recognizing "the distinction between a substantive state insurance law, which if saved will provide 'a relevant rule of decision' in an ERISA civil enforcement action, and a state judicial remedy, which is conflict-preempted under *Pilot Life even if* it was created or authorized by a state insurance statute" (citations omitted)).

Having concluded that the Maryland HMO Act is saved in that it satisfies the two-part test set forth in *Miller* and does not impermissibly conflict with § 502(a), we turn to the question of whether the district court properly refused to remand this case to State court. This question is resolved by determining whether Singh's claims, pleaded under State common law, fall within the scope of § 502(a) so that they are to be treated as federal claims under ERISA through the doctrine of "complete preemption" and therefore are subject to removal jurisdiction.

V

Although Singh's complaint relies on the application of the Maryland HMO Act's subrogation prohibition enforced through common-law theories of unjust enrichment and negligent misrepresentation, the question remains whether it in effect

seeks a benefit due under the terms of the Prudential plan. Even though the subrogation prohibition from State law is saved and the Prudential plan must be enforced as modified thereby, as we have concluded, if Singh's claims fall within the scope of § 502(a) of ERISA, they nonetheless will be "completely preempted" with the effect that the claims are converted to federal claims and the case is therefore removable to federal court.

In drafting ERISA, "Congress clearly expressed an intent that the civil enforcement provisions of ERISA § 502(a) be the exclusive vehicle for actions by ERISA-plan participants and beneficiaries asserting improper processing of a claim for benefits, and that varying State causes of action for claims within the scope of § 502(a) would pose an obstacle to the purposes and objective of Congress." *Pilot Life*, 481 U.S. at 52. The provisions of § 502(a) authorize plan participants or beneficiaries "to file civil actions to, among other things, recover benefits, enforce rights conferred by an ERISA plan, remedy breaches of fiduciary duty, clarify rights to benefits, and enjoin violations of ERISA." *Marks v. Watters*, 322 F.3d 316, 323 (4th Cir. 2003). If a state-law claim falls within the scope of § 502(a), the complete-preemption doctrine set forth in *Metropolitan Life v. Taylor*, 481 U.S. 58, 67 (1987), provides that the state-law claim is "necessarily federal in character" such that it "arise[s] under" federal law and is removable to federal court. The Court in *Metropolitan Life v. Taylor* found that § 502(a) exhibited the "extraordinary pre-emptive power" also found with respect to § 301 of the Labor Management Relations Act ("LMRA") "that converts an ordinary state common law complaint [in the Act's scope] into one stating a federal claim for purposes of the well-pleaded complaint rule." *Id.* at 65. Thus, if Singh's state-law claims fall within the scope of § 502(a), they are not only properly removed to federal court,

they are also "treated as federal causes of action." *Marks*, 322 F.3d at 323. But to the extent that state-law claims seek remedies that fall outside the scope of § 502(a), they are rejected as preempted. *Id.*

In this case, the complaint, relying on state-law causes of action, nonetheless seeks some remedies that undoubtedly fall within the scope of § 502(a), even if others might fall outside of its scope.

Relying on theories of unjust enrichment and negligent misrepresentation under Maryland law, Singh's class-action complaint seeks a *declaratory judgment* that the subrogation term of the plan is illegal under the Maryland HMO Act, that Prudential negligently misrepresented its rights under the plan, that the HMO members need not pay subrogation claims asserted by Prudential, and as to those members who have already paid, that Prudential has been unjustly enriched. The complaint also requests *equitable restitution* of amounts paid and demands *compensatory damages*. Finally, the complaint requests and *injunction* against future violations, including a prohibition against Prudential from "increasing premiums, co-payments, or other charges paid by class members when such increases are in whole or in part for the purpose of recouping the losses or expenses incurred in connection with this litigation." In sum, Singh seeks the return of amounts paid under the authority of the subrogation clause in the Prudential plan and demands consequential damages, as well as protective adjudications.

For a substantial part of the relief requested, Singh's complaint asserts entitlement to undiminished benefits under the Prudential plan. Because Prudential successfully pursued a subrogation claim against Singh's recovery from a third party,

the benefit sought is the return of funds taken pursuant to the plan's subrogation term that was negated by the Maryland HMO Act. At least this portion of the remedies sought falls within the scope of those provided by § 502(a), particularly insofar as Singh's individual claim for relief is concerned. Section 502(a)(1)(B) allows a plaintiff to bring a claim "to recover benefits due to [her] under the terms of a plan," while § 502(a)(3) allows her to obtain injunctive or other appropriate equitable relief.

Singh's claim to recover the portion of her benefit that was diminished by her payment to Prudential under the unlawful subrogation term of the plan is no less a claim for recovery of a plan benefit under § 502(a) than if she were seeking recovery of a plan benefit that was denied in the first instance. Whether a State law defines the quantum of a plan benefit by negating subrogation terms that would diminish the benefit, as here, or defines a plan benefit by mandating coverage of certain treatments, as in *Metropolitan Life v. Massachusetts*, 471 U.S. 724 (1985), ERISA's complete dominion over a plan participant's claim to recover a benefit due under a lawful application of plan terms is not affected by the fortuity of *when* a plan term was misapplied to diminish the benefit. Thus, for purposes of complete preemption under § 502(a), a claimant who is denied a benefit is no different than a claimant who is faced with an invoice from the insurer for the return of a benefit paid or a claimant who has paid such an invoice, because resolution in each case requires a court to determine entitlement to a benefit *under the lawfully applied terms* of an ERISA plan. The jurisdictional aspect of ERISA's remedial scheme, which overpowers even the well-pleaded complaint rule, cannot itself be overpowered by clever or fortuitous maneuvers. *See, e.g.*, *Carducci v. Aetna U.S. Healthcare*, 204 F. Supp. 2d 796, 803 (D. N.J. 2002) (holding that plaintiffs' claims to "regain the

whole benefit provided to them by defendants, including those amounts paid in subrogation pursuant to the terms of the plans" were claims for "benefits due under the terms of the plan" and therefore completely preempted). *But see Arana v. Ochsner Health Plan, Inc.*, 302 F.3d 462, 470 (5th Cir. 2002) (holding that a plan participant's claim disputing enforcement of a plan's subrogation term in light of a State antisubrogation law "is not one for benefits under section 502(a)"), *reh'g en banc granted*, 319 F.3d 205 (5th Cir. 2003).

In concluding that the fortuity of *when* a plan term was misapplied to diminish a benefit is not determinative of whether Singh's claim is a claim for a benefit, we hold that when the validity, interpretation or applicability of *a plan term* governs the participant's entitlement to a benefit or its amount, the claim for such a benefit falls within the scope of § 502(a). *Compare Administrative Committee v. Gauf*, 188 F.3d 767 (7th Cir. 1999) (holding that a claim fell within the scope of § 502(a)(3) because it was "most appropriately characterized as a reimbursement right *under the terms of the Plan* and therefore a matter of federal law") (emphasis added), *with Speciale v. Seybold*, 147 F.3d 612 (7th Cir. 1998) (holding that a plan participant's suit requesting that a court apportion a settlement recovery was not completely preempted because "the claim [did] not involve the interpretation of contract terms"). Because Singh's state-law claims cannot be resolved without passing on the validity of the subrogation term of her ERISA plan, those claims are within the scope of § 502(a) and therefore are completely preempted.

Singh's claim for equitable relief is also identifiable as a claim under § 502(a)(3). *See, e.g., Lyons v. Philip Morris Inc.*, 225 F.3d 909, 912-13 (8th Cir. 2000) (holding that plan trustees' state-law claims to recover, in connection with the plan's

subrogation term, benefits paid was completely preempted under § 503 (a)(3)'s exclusive application to "suits to enforce the terms of the plan").

Therefore, to the extent that Singh's claims seek return of a plan benefit unreduced by subrogation and equitable relief, they undoubtedly fall within the scope of § 502 (a) and for that reason are "completely preempted." The district court therefore did not err in denying plaintiff's motion to remand.

VI

Because we have found that at least some of Singh's claims are completely preempted, leading to their conversion into federal claims and their removal to federal court, those completely preempted claims must now be decided by the district court. In dismissing the claims based simply on preemption, the district court failed to appreciate that the claims *completely* preempted were converted into federal claims that need to be decided as federal claims under § 502(a). *See Pilot Life*, 481 U.S. at 56 ("[A]ll suits brought by beneficiaries or participants asserting improper processing of claims under ERISA-regulated plans [should] be treated as federal questions governed by § 502(a)"); *Marks*, 322 F.3d at 327 (determining that plaintiff's state-law claims were completely preempted and then assessing their merits, treating them as § 502(a) claims); *Darcangelo v. Verizon Communications, Inc.*, 292 F.3d 181, 195 (4th Cir. 2002) ("Nevertheless, when a claim under state law is completely preempted and is removed to federal court because it falls within the scope of § 502, the federal court should not dismiss the claim as preempted, but should treat it as a federal claim under § 502"); *see also Wood v. Prudential Insurance Co.*, 207 F.3d 674, 682 (3d Cir. 2000) (Stapleton, J., dissenting) ("If a claim based on state law is completely

preempted, however, it is treated as a federal claim; a district court has federal question removal jurisdiction to entertain it, and the claim, after removal, should go forward in the district court as a federal claim"); *Jass v. Prudential Health Care Plan, Inc.*, 88 F.3d 1482 (7th Cir. 1996) (remanding plaintiff's state-law claim, to permit plaintiff to amend the complaint and pursue relief under § 502(a)). The conclusion that a state-law claim should be recharacterized as a claim arising under federal law and assessed on the merits under federal law is supported by analogous jurisprudence in the area of complete preemption under § 301 of the LMRA. *See Int'l Bhd. Of Elec. Workers v. Hechler*, 481 U.S. 851 (1987) (determining that plaintiff's state-law claim was completely preempted by § 301 of the LMRA and then remanding to the court of appeals for reconsideration of the timeliness of the plaintiff's claim under § 301).

This does not mean that all of Singh's claims for damages asserted under State law must be recognized by the district court on remand. Rather, the district court must consider only remedies authorized by § 502(a) and must reject all others.

On remand, to facilitate its consideration of Singh's claims, the district court may choose to grant plaintiff leave to amend her complaint in order to clarify the exact scope of relief requested under § 502(a). Repleading, however, is not necessary for the plaintiff's claims to be treated as arising under § 502 (a). Regardless of how the plaintiff's claims are ultimately pleaded, the remedies available to plaintiff in this case where Singh seeks to enforce the terms of an ERISA plan, as modified by the Maryland HMO Act, are limited to those remedies set forth in § 502(a).

VII

In sum, we conclude that Singh's State common-law claims are claims for benefits due under the terms of an ERISA plan and are therefore "completely preempted," such that federal removal jurisdiction exists. In reaching the conclusion that Singh's claims seek to enforce a term of the Prudential plan, we conclude that, although the Maryland HMO Act "relates" to an employee benefit plan, it is saved as a State regulation of insurance that does not conflict with § 502(a) of ERISA, such that it defines a term of the ERISA plan. Because Singh's claims seek to enforce a term of the Prudential plan, as so modified by State law, they are within the scope of § 502(a) and must be adjudicated as federal claims under that section. Finally, we conclude that any claimed relief that supplements, supplants, or conflicts with the remedies provided by § 502(a) must be rejected as preempted.

Accordingly, we affirm the district court's ruling denying plaintiff's motion to remand, reverse its ruling granting Prudential's motion to dismiss, and remand to the district court for consideration of plaintiff's claims to the extent they fall within the scope of § 502(a) of ERISA. In doing so, we express no opinion on whether all of the relief requested in the current complaint is consistent with the remedies supplied under § 502(a).

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

SABRIYANA M. SINGH, **Plaintiff,** **v.** **PRUDENTIAL HEALTH CARE PLAN, INC.,** **Defendant.**	**Civil Action No. AW-00-2168**

ORDER

For the reasons stated by this Court on the Record in its oral opinion, IT IS this 14th day of December, 2000 by the United States District Court for the District of Maryland, ORDERED:

1. That Plaintiffs Motion to Stay [7-1], or in the alternative, to Remand to State Court [7-2] be and the same hereby IS, **DENIED**; and further ORDERED

2. That Defendant's Motion to Dismiss [8-1] the Plaintiff's complaint, be and the same hereby IS, **GRANTED**; and

3. That the Clerk of the Court **Close** this case; and

4. That the Clerk of the Court transmit copies of this Order to all parties of record.

s/
Alexander Williams, Jr.
United States District Court Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

SABRIYANA M. SINGH, Plaintiff,	• Civil Action No. AW-00-2168
v.	• Greenbelt, Maryland
PRUDENTIAL HEALTH CARE PLAN, INC., Defendant.	• Thursday, December 14, 2000
• • • •	• 3:40 p.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE
ALEXANDER WILLIAMS, JR.
UNITED STATES DISTRICT JUDGE

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STENOTYPE NOTES

THE COURT: All right. Well, this is, of course, an interesting debate, but let me be honest, Mr. Bland. I think a lot of what you have said falls into two categories. One, there seems to be policy debates that you are referring to, particularly when I look at your complaint. You seem to suggest some things that the, I guess, lobbyists for the HMOs did to get the particular legislation through. That's really not before me, but it sounds as though you have some problems with the tactics of the HMOs and what they did. So, a lot of what you have referred to infer, in my opinion, some policy debates that concern you.

And then, secondly, a great deal of your arguments are based on the resolution of issues that are in appellate courts, and your suggestion for me to delve in and dig in right now and get into these issues that will soon be resolved by appellate court, in my judgment is not appropriate in this particular case.

This case is basically fairly new. We haven't had any extensive discovery and you may prevail somewhere down the line in the Court of Appeals, Maryland Court of Appeals, or even in the Fourth Circuit. But I have a case before me right now that leaps out for a dismissal and it does because, again, there's a presumption. There is a presumption of the

constitutionality of a state statute. And it's already been held as constitutional by a trial judge in Montgomery County.

Secondly, my colleague, Judge Legg in the Northern Division, has already ruled that these issues clearly are preempted. They fall within the complete preemption of ERISA because they address issues of enforcement again of subrogation.

I have read Senate Bill 903. It's clear on its face and it seems to me that it does retroactively statutorily moot now these claims that you have raised for unjust enrichment for money had an received and also negligent misrepresentation. Because this action was within the retroactive period, in my view, Senate Bill 903 precludes relief and does authorize HMOs to seek subrogation. It's there clear.

And so, I think that there's ample justification to dismiss the action, because I don't think you can get any relief if the matter has to be even sent back or remanded back. You're not going to get any relief right now.

You have requested, Mr. Bland, a motion to stay. I don't see where you have established any basis for that on this record. There's no hardships presented. Again, if you are successful on appeal, you'll be able to get relief because you said you will file your motion to appeal. You'll appeal whatever decision I make and you'll be in the Fourth Circuit. But even if you didn't appeal, I'm sure Prudential would do what they had to do to make folk whole if they're ultimately proven to be wrong. Prudential will take care of that. So, you haven't presented any real hardship, no hardship at all that you have. So a stay just isn't appropriate. And a remand, as I said before, I don't think is appropriate for a couple of reasons. First of all, I do agree

with Judge Legg in his decision that the issues are completely preempted under ERISA. But for the second reason I've said before, if we even remanded these issues to state court, Senate Bill 903 appears to preclude you from getting relief at the present time.

Mr. Bland, I believe that most of your arguments this afternoon rest on possible favorable rulings that you will receive from the Court of Appeals for the Fourth Circuit. But merely because somewhere down the line you may get relief is not a real basis for this Court staying cases, administratively closing cases and just holding cases until some relief comes.

This is a good issue. There's no question about it. These are interesting issues and I commend you for fighting, and I say fight on. If you prevail and all of us are wrong, we'll correct it. We'll make that decision. But there's no reason for me to stay this case or remand it back under these circumstances. You are on the right track. You have forums that are going to give you your hearings and you have wonderful appellate courts, far greater wisdom than me here sitting in Greenbelt.

And so, for these reasons stated on the record, I'm going to deny the motion to stay and deny in the alternative the motion to remand to state court, and I'm going to grant the motion filed by Mr. Temchine to dismiss this case. There won't be any need for me to go into any certification of a class action at the present time.

MR. TEMCHINE: Thank you, Your Honor.

MR. BLAND: Your Honor, could I have one minute?

THE COURT: Yes.

MR. BLAND: Thank you very much, Your Honor. The one thing I wanted to add was in preparing for the state appeal that we're trying to do in the Kaiser case, the Harvey case I mentioned earlier, we put a lot of evidence into the record that we felt was relevant to the Maryland state constitutional issues that we didn't do here because I wasn't sure this Court was going to want several hundred pages of the legislative history, which is something that the Court looks at.

I would like the opportunity, if I may, to supplement the record with – if the constitutionality issue is going to be up in front of the Fourth Circuit, I don't have the record that I need in order to argue the constitutional issues. If I could supplement –

THE COURT: Not on this case. Do you oppose that?

MR. TEMCHINE: Yes.

THE COURT: On what I have before me, I have decided to dismiss this case and grant the motion on what I've seen. That's my ruling. You have enough, again, to get into Richmond. Let's not use this case as a testing case on what I have here.

All right. I'm going to do the order and this case will be closed.

MR. TEMCHINE: Thank you, Your Honor.

(Proceedings adjourned at 4:10 p.m.)

CERTIFICATE OF REPORTER

This record is certified by the undersigned reporter to be the official transcript of proceedings in the above-entitled matter.

s/_____
Gloria I. Williams
Official Court Reporter